

REMARKS

As an initial matter, Applicants appreciate the Examiner's reconsideration and withdrawal of all of the claim rejections included in the Office Action dated February 28, 2005. For the reasons explained in more detail below, Applicants respectfully submit that the claim rejections included in the present Office Action dated September 9, 2005, should also be withdrawn.

I. Section 103(a) Claim Rejection Based on Koga et al. in view of Fiaschetti et al.

In the Office Action, claims 1, 4, and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Koga et al. (U.S. Patent No. 5,670,830) in combination with Fiaschetti et al. (U.S. Patent No. 5,901,684). Claim 1 is the only independent claim rejected under § 103(a) based on the Office Action's hypothetical combination of the Koga et al. and Fiaschetti et al. references, and Applicants respectfully traverse the rejection of independent claim 1 because those references, regardless of whether they are viewed individually or in combination, fail to disclose or suggest all of the subject matter recited in independent claim 1.

In order to establish a *prima facie* case of obviousness, the reference (or references when combined) must disclose or suggest all of the subject matter recited in a claim. M.P.E.P. § 2143. Because the Office Action's hypothetical combination of Koga et al. and Fiaschetti et al. fails to disclose or suggest all of the subject matter recited in Applicants' independent claim 1, the Office Action fails to establish a *prima facie* case of obviousness under the guidance of the M.P.E.P.

Applicants' independent claim 1 is directed to a power management system for a machine, including, among other recitations, "a power source configured to receive a

fuel supply; [and] a transmission being driveably engaged with the power source”

Neither the Koga et al. reference nor the Fiaschetti et al. reference discloses at least that subject matter recited in independent claim 1.

In the Office Action, the rejection statement asserts that Koga et al. discloses “a power management system for a machine, comprising: a power source configured to receive a fuel supply (see Koga et al., Fig.1 refs. 13, 9); [and] a transmission being driveably engaged with the power source (see Koga et al., Fig.1 refs. 9, 4, 2)” Office Action at 2.

Applicants respectfully disagree with the rejection statement's assertion at least because the Koga et al. reference does not disclose “a transmission being driveably engaged with [a] power source.” Rather than disclosing a power management system for a machine including a transmission, the Koga et al. reference discloses a fuel use limiter-equipped hybrid-electric car. Abstract. The fuel use limiter hybrid-electric car includes a dynamo internal combustion engine 7, which drives a generator 6. (Col. 8, lines 46-47.) The generator 6 is connected to a battery 1, which supplies electric power to an electric motor 2. (Col. 8, lines 29-30, 47-48.) The electric motor 2 drives drive wheels 3A and 3B. (Col. 8, line 32.) The output of the electric motor 2 is controlled by a motor controller 4. (Col. 8, lines 33-34.) The Koga et al. reference does not disclose, however, “a transmission being driveably engaged with [a] power source,” as asserted in the rejection statement.

In addition to not disclosing a transmission, the Koga et al. reference's principle of operation precludes any hypothetical modification of it's hybrid-electric car to include a transmission. Under the guidance of the M.P.E.P., “[i]f [a] proposed modification or combination of the prior art would change the principle of operation of the prior art

invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” § 2143.01. The Koga et al. hybrid-electric car does not include a transmission because the electric motor 2 directly drives the drive wheels 3A and 3B. In other words, the direct driving of wheels 3A and 3B obviates the need to have a transmission and, thus, there would have been no legitimate reason to modify the subject matter of the reference to include such a feature. Since the Koga et al. hybrid-electric car is arranged to obviate any use of a transmission, any attempt at modifying Koga et al.’s hybrid-electric car to include “a transmission being driveably engaged with [a] power source,” as recited in claim 1, would improperly alter its principle of operation. For at least the above reasons, independent claim 1 is not *prima facie* obvious based on Koga et al. and/or Fiaschetti et al.

The rejection statement also concedes that Koga et al. does not disclose “that the fuel supply limit is determined from a fuel curve associated with the machine,” but nevertheless asserts “that this was a desirability of every car’s designer--to perfect the engine’s performance according to a predetermined curve), wherein the control system is operative to modify at least a portion of the fuel curve based on a load condition of the power source (see Koga et al., Fig. 3).” Office Action at 3.

Applicants respectfully submit that the rejection statement has apparently misinterpreted what the Koga et al. reference discloses. In particular, the rejection statement refers to Fig. 3 in apparent support of its otherwise unsupported assertion that “the control system [9 of Koga et al.] is operative to modify at least a portion of the fuel curve based on a load condition of the power source. . . .” Id. Applicants respectfully note that Figs. 2 and 3 of Koga et al. relate to limiting torque of electric motor 2 rather than modifying a portion of a fuel curve. See, e.g., col. 9, line 58,

through col. 10, line 33 (describing how Koga et al. limits the output of electric motor 2). Furthermore, limiting the output of electric motor 2 of Koga et al.'s hybrid-electric car does not necessarily relate to limiting any alleged fuel curve of Koga et al.'s dynamo internal combustion engine 7.

For at least these reasons, the rejection statement has apparently misinterpreted what the Koga et al. reference discloses. At least by virtue of this misinterpretation, the rejection statement has failed to establish that all of the subject matter recited in Applicants' independent claim 1 is either disclosed or suggested by the Koga et al. and/or Fiaschetti et al. references, taken alone or in combination. Therefore, the Office Action has failed to establish that independent claim 1 is *prima facie* obvious based on those references.

II. Section 103(a) Claim Rejection Based on Koga et al. in view of Fiaschetti et al. and Rini et al.

In the Office Action, claims 2, 3, 9, 13, 15, and 17 were rejected under 35 U.S.C. § 103(a) based on Koga et al. in combination with Fiaschetti et al. and Rini et al. (U.S. Patent No. 5,121,324). Claims 2 and 3 are the only independent claims rejected under § 103(a) based on the Office Action's hypothetical combination of the Koga et al., Fiaschetti et al., and Rini et al. references, and Applicants respectfully traverse the rejection of those independent claims because those references, regardless of whether they are viewed individually or in combination, fail to disclose or suggest all of the subject matter recited in each of independent claims 2 and 3.

In apparent reliance on the assertions included in the rejection statement relating to the rejection of Applicants' independent claim 1 under § 103(a) based in Koga et al.

and Fiaschetti et al., the rejection statement relating to independent claims 2 and 3 asserts that “[t]he rationales and references of claim 1 are incorporated.” Office Action at 5. Although claims 2 and 3 are different in scope from claim 1, Applicants respectfully submit that to the extent the § 103(a) rejection of independent claims 2 and 3 relies on the rationale of the rejection of independent claim 1, the § 103(a) rejection of independent claims 2 and 3 fails to establish a *prima facie* case of obviousness for reasons at least similar to those outlined above with respect to independent claim 1. In particular, the Koga et al. and Fiaschetti et al. references do not disclose all of the subject matter recited in Applicants’ independent claims 2 and 3, and the Rini et al. reference does not overcome the deficiencies of the Koga et al. and Fiaschetti et al. references. For at least these reasons, Applicants’ independent claims 2 and 3 are patentably distinguishable from the rejection statement’s proposed, hypothetical combination of the Koga et al., Fiaschetti et al., and Rini et al. references.

III. Section 103(a) Rejections of Dependent Claims 5-7, 10-12, 14, and 16

In the Office Action, dependent claims 5-7, 10-12, 14, and 16 were rejected under 35 U.S.C. § 103(a) based on Koga et al. and Fiaschetti et al. in combination with one or more of the following: Manring (U.S. Pat. App. Pub. No. US 2002/0133279); Rini et al.; and Schimmel et al. (U.S. Patent No. 4,885,690). Those claims each depend from one of independent claims 1, 2, and 3. Therefore, those dependent claims should be allowable for at least the same reasons their corresponding independent claim is allowable.

IV. Conclusion

As outlined above, independent claims 1-3 should be allowable. Dependent claims 4-17 each depend from one of allowable independent claim 1-3. Therefore, each of those dependent claims should be allowable for the same reasons their corresponding independent claim is allowable as well as by virtue of their recitations of additional novel and non-obvious subject matter.

Applicants respectfully request reconsideration of this application, withdrawal of the outstanding claim rejections, and allowance of claims 1-17.

If the Examiner believes that a telephone conversation might advance prosecution, the Examiner is cordially invited to call Applicants' undersigned attorney at 571-203-2739.

Applicants respectfully submit that the Office Action contains a number of assertions concerning the related art and the claims. Regardless of whether those assertions are addressed specifically herein, Applicants respectfully decline to automatically subscribe to them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 6-0916.

Respectfully submitted,

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